

**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON**

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-13474, Clackamas County)	PROPOSING APPROVAL OF A
)	CHANGE IN PLACE OF USE AND
)	PARTIAL CANCELLATION OF A
)	WATER RIGHT

Authority

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of diversion, place of use, or character of use authorized under an existing water right. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and request voluntary cancellation.

Applicant

CAL FARMS, INC.
ATTN: AMBROSE CALCAGNO
17031 S CLACKAMAS RIVER DR
OREGON CITY, OR 97045

Findings of Fact

1. On June 16, 2020, CAL FARMS, INC. filed an application for change in place of use under Certificate 30928. The Department assigned the application number T-13474.
2. Notice of the application for transfer was published on June 30, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On November 30, 2020, the Department contacted the applicant's agent by written correspondence a notification deficiencies in the application. The deficiencies included incomplete Evidence of Use Affidavit and Consent by Deeded Landowner. The Department requested that the deficiencies be resolved by December 31, 2020.
4. On December 29, 2020, the Department received an amended Transfer Application map, Evidence of Use aerial image, and map and a corrected Table 2 of the transfer application.

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this preliminary determination.

5. On December 31, 2020, the Department received an evidence of use affidavit, consent by deeded landowner affidavit and an affidavit for the voluntary cancellation of a portion of a water right certificate.
6. On February 5, 2021, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13474 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 7, 2021, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
7. On February 23, 2021, the agent for the applicant requested one additional year to complete the proposed changes because of delays likely to occur due to the COVID pandemic, the time needed to install irrigation system equipment on the south side of the highway as well as uncertainty in the planting schedules for the field.
8. The portion of the right to be transferred is as follows:

Certificate: 30928 in the name of MRS. A. R. SMITH (perfected under Permit S-25796)

Use: IRRIGATION of 9.0 ACRES

Priority Date: SEPTEMBER 29, 1958

Rate: 0.113 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: CLACKAMAS RIVER, tributary of WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
2 S	2 E	WM	13	SW NE	5	None Given

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
2 S	2 E	WM	13	SW NE	5	0.2
2 S	2 E	WM	13	NE NW	6	8.8
					Total	9.0

9. Transfer Application T-13474 also proposes to change the place of use of the right to:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
2 S	2 E	WM	13	SW NE	5		1.5
2 S	2 E	WM	13	SE NW	6		3.1
2 S	2 E	WM	13	NE SE		68	0.9
2 S	2 E	WM	13	NW SE		68	3.5
						Total	9.0

Transfer Review Criteria [OAR 690-380-4010(2)]

10. Water has been used within the last five years according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
11. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Transfer Application T-13474.
12. The proposed change, as conditioned, would not result in enlargement of the right.
13. The proposed change would not result in injury to other water rights.
14. All other application requirements are met.

Partial Cancellation of a Water Right

15. On December 31, 2020, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Colleen C. Calcagno, Trustee. The right portion of the to be cancelled is as follows:

Certificate: 30928 in the name of MRS. A. R. SMITH (perfected under Permit S-25796)
Use: IRRIGATION of 0.3 ACRE
Priority Date: SEPTEMBER 29, 1958
Rate: 0.004 CUBIC FOOT PER SECOND
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: CLACKAMAS RIVER, tributary of WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
2 S	2 E	WM	13	SW NE	5	None Given

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
2 S	2 E	WM	13	SW NE	5	0.3

Determination and Proposed Action

The change in place of use proposed in Transfer Application T-13474 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

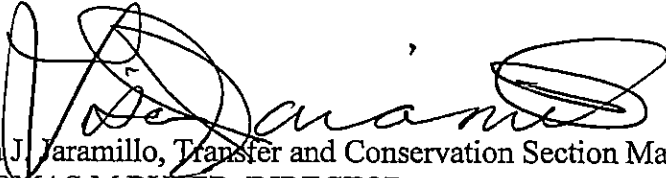
If Transfer Application T-13474 is approved, the final order will include the following:

1. *The change in place of use proposed in Transfer Application T-13474 are approved.*
2. *The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificate 30928 and any related decree.*
3. *Water right Certificate 30928 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer and cancellation.*
4. *Water use measurement conditions:*
 - a. *Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at each point of diversion.*
 - b. *The water user shall maintain the meters or measuring devices in good working order.*
 - c. *The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.*
5. *The former place of use of the transferred right shall no longer receive water under the right.*
6. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before October 1, 2023. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the change and full beneficial use of the water.*

7. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated in Salem, Oregon on

APR 14 2021



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
THOMAS M BYLER, DIRECTOR
Oregon Water Resources Department

This Preliminary Determination was prepared by Scott Grew. If you have questions about the information in this document, you may reach him at scott.a.grew@oregon.gov or 503-986-0890.

Protests should be addressed to the attention of Water Rights Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.

IMPORTANT: Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. Mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

Notice Regarding Service Members: Active duty servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free number.



Oregon

Kate Brown, Governor

Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301
(503) 986-0900
Fax (503) 986-0904

April 14, 2021

Applicant

CAL FARMS, INC.
ATTN: AMBROSE CALCAGNO
17031 S CLACKAMAS RIVER DR
OREGON CITY, OR 97045

SUBJECT: Water Right Transfer Application T-13474

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13474. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

A public notice is being published in the Department's weekly publication simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision. The protest period will end 30 days after the Department's notice.

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

Please contact me at scott.a.grew@oregon.gov or 503-986-0890 if I may be of assistance.

Sincerely,

Scott Grew

Transfer Specialist
Transfer and Conservation Section

cc: Transfer Application file T-13474
Amy J. Landvoigt, District 20 Watermaster (*via e-mail*)
Steven R. Bruce, Agent for the applicant (*via e-mail*)

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